198; *Rex* v. *Oliphant*, [1905] 2 K. B. 67; *Reg.* v. *Butt*, 15 Cox C. C. 564. And if, as in the principal case, the defendant's act clearly participated in producing the wrongful result, it is not material that it was not a *causa sina qua non*. *Anderson* v. *Settergren*, 100 Minn. 294, 111 N. W. 279; *Binford* v. *Johnston*, 82 Ind. 426; *Reg.* v. *De Marny*, [1907] 1 K. B. 388. However, it was once currently asserted and is still heard to-day, that this rule of foreseeability does not apply when the intervening independent acts were done wilfully and unsolicited. *Andrews & Co.* v. *Kinsel*, 114 Ga. 390, 40 S. E. 300. See *Alexander* v. *Town of New Castle*, 115 Ind. 51, 53. See 1 WHARTON, CRIMINAL LAW, 9 ed., § 160. But this limitation, which is inconsistent with the general principles of causation since intentional acts may be equally as foreseeable as negligent ones, has been much criticized and is less widely asserted to-day. See J. Smith, "Legal Cause in Actions of Tort," 25 HARV. L. REV. 103, 121; SALMOND, TORTS, 2 ed., 114. See *Lynch* v. *Knight*, 9 H. L. Cas. 577, 600; *Meade* v. *Chicago, etc. Ry. Co.*, 68 Mo. App. 92, 100. *Cf. Wise* v. *Dunning*, [1902] 1 K. B. 167. Nor is proximate causation in the principal case negatived by the series of cases holding that a seller who did no acts tending directly to further the illegality, may enforce a contract of sale though he knew the goods were to be illegally resold in another jurisdiction. *Graves* v. *Johnson*, 179 Mass. 53, 60 N. E. 383; *Hill* v. *Spear*, 50 N. H. 253; *Pellecat* v. *Augell*, 2 Crompt. Meas. & Ros. 311. For these cases turn on questions of public policy and comity rather than of proximate causation. See *Hill* v. *Spear*, *supra*, at 273. Granting causation it is submitted that the fact that the defendant in the present case is not technically either a *principal* or an *accessory* does not prevent his conviction, for if causation and the necessary elements of an offense are made out, an arbitrary technicality of crimes at common law should not be carried over to support acquittal for violation of a police regulation. *Reg.* v. *De Marny*, *supra*. However, in enforcing liquor regulations it has been generally held that a person, whether buying for himself or as agent, cannot be held liable because the sale was illegal. *State* v. *Rand*, 51 N. H. 361; *Commonwealth* v. *Willard*, 22 Pick. (Mass.) 476; *Evans* v. *State*, 55 Tex. Cr. 450, 117 S. W. 167; *Anderson* v. *State*, 32 Fla. 242, 13 So. 435. But those cases are supportable on reasons applicable to buyers only. See 26 HARV. L. REV. 550. Hence they are not in conflict with the decision in the principal case.

DAMAGES — PENALTIES — EFFECT OF POSTING PENAL SUMS TO SECURE PERFORMANCE OF CONTRACT. — The plaintiff and R., having formed a contract, placed the written agreement and $2,000 apiece with the defendant bank, which, in the event of a breach of this contract, was to pay the delinquent's deposit to the injured party. After the date set for performance of the contract, the plaintiff, contending that the arrangement for the payment of penalties was void, demanded the return of his deposit. On the bank's refusal to comply, he sues. *Held*, that he cannot recover without showing that R. has no claim on his deposit for damages. *Kuter* v. *State Bank of Holton*, 152 Pac. 662 (Kan.).

In lieu of the above arrangement, suppose that the plaintiff and R. had exchanged penal bonds of $2,000, to be void on performance by the obligors of their respective contractual duties. Equity, and subsequently the common law, early recognized that the condition was the essence of a penal bond and indicated the true limit of the obligation. *Parks* v. *Wilson*, 10 Mod. 515. See *Collins* v. *Collins*, 2 Burr. 820, 824; 2 SEDGWICK, DAMAGES, 9 ed., § 675 *b*; 2 BL. COM. 341. Consequently, it came to be held that in a suit at law on a penal bond the obligee could not obtain the sum named therein, which was a penalty, and recovery was limited to the loss actually ensuing from the non-performance of the condition. *Kelley* v. *Seay*, 3 Okla. 527, 41 Pac. 615; *McIntosh* v. *Johnson*, 8 Utah 359, 31 Pac. 450. Thus, though the obligation in the supposed case is

to pay $2,000, neither more nor less, and is unenforceable as such, the bond is not void, but remains a valid instrument which is regarded as security for the payment of damages. The interpolation of a third party to hold and pay penal deposits differs in no essential way from the exchange of penal bonds, for, although the third party is a stranger to the original contract, in both instances this latter agreement remains the substance of the transaction. It follows, therefore, notwithstanding the fact that the agreement in the principal case to pay over the penal sum was unenforceable as such, that the deposit remained a source of payment of possible damages.

DESCENT AND DISTRIBUTION — NATURE OF ESCHEAT — WHETHER SUBJECT TO INHERITANCE TAX. — Real and personal property of an intestate without heirs escheated under a statute to the county wherein it was situated. The state sued to collect an inheritance tax under a statute imposing a tax on the transfer of any property "by will or by the intestate laws of this state." *Held*, that the transfer by escheat is subject to the tax. *People* v. *Richardson*, 109 N. E. 1033 (Ill.).

Under a similar statute providing for escheat the Probate Court with statutory powers to distribute intestate estates, decreed that the property of an intestate without known heirs escheated to the defendant county. The plaintiff, claiming as heir, now sues the county to recover the land, alleging that as an escheat was not a form of inheritance, the Probate Court had no jurisdiction. *Held*, that escheat was part of the scheme of distribution, and the Probate court had jurisdiction. *Christianson* v. *County of King*, Sup. Ct. Off., No. 67.

Under the English common law escheat was an incident of feudal tenure. On the failure of heirs or of inheritable blood to the tenant, the tenure was determined, and the land reverted back to the lord, the original grantor. See CO. LITT. 13 *a*; 2 BL. COM. 72, 244; 4 KENT COM. 423. Escheat in its feudal sense still persists in England. See WILLIAMS, REAL PROPERTY, 55. That this feudal escheat should not be subject to an inheritance tax is shown by the analogy that the coming into possession of a vested remainder upon the death of a life tenant is not so taxable. *In re Pell's Estate*, 171 N. Y. 48, 63 N. E. 789. But in the United States escheat in the feudal sense seems not to exist. See 3 WASHBURN, REAL PROPERTY, 6 ed., 61. It is doubtful whether there has been any feudal tenure in this country since the Revolution. See 2 BL. COM., Cooley's ed., 102 n.; 4 KENT COM. 424; 1 WASHBURN, REAL PROPERTY, 5 ed., 39–42. See *contra*, GRAY, RULE AGAINST PERPETUITIES, § 22. In a number of states it has been expressly declared non-existent. See GRAY, RULE AGAINST PERPETUITIES, § 23. The state now succeeds to the estate of the deceased as *ultimus haeres*, by virtue of its sovereignty. See *Matthews* v. *Ward's Lessee*, 10 Gill & J. (Md.) 443, 451. See TIFFANY, REAL PROPERTY, § 458. Under the English common law escheat did not apply to personalty, nor to equitable interests in land; but in the United States it is now almost entirely regulated by statute, and includes the transfer to the state of property rights of every nature. Compare *Burgess* v. *Wheate*, 1 Eden 177, with *Johnston* v. *Spicer*, 107 N. Y. 185, 13 N. E. 753; *Matthews* v. *Ward's Lessee*, *supra*; *Commonwealth* v. *Blanton's Executors*, 2 B. Mon. (Ky.) 393. See STIMSON, AM. ST. LAW, §§ 1151, 1157. It is submitted that escheat in this country is properly included within "the intestate laws," and is therefore subject to the usual form of inheritance tax.

DIVORCE — DEFENSES — VOIDABILITY OF THE MARRIAGE. — The plaintiff brought an action for separation from her husband. The husband, in defense, pleaded facts that showed the marriage to be voidable at his election. *Held*, that this is not a good defense. *Ostro* v. *Ostro*, 155 N. Y. Supp. 681 (App. Div.).

It is axiomatic that a divorce proceeding must be predicated upon the exist-